

**INTERLOCAL AGREEMENT**  
**BETWEEN CLARK REGIONAL WASTEWATER DISTRICT**  
**AND THE CITY OF VANCOUVER**  
**FOR UTILITY CONSTRUCTION**

THIS IS AN INTERLOCAL AGREEMENT for 'Utility Construction', entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the **Clark Regional Wastewater District**, a special purpose District providing wastewater services within Clark County, Washington (the "District"), and the **City of Vancouver**, a municipal corporation and charter city of the first class in the State of Washington (the "City").

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or services which each is by law authorized to perform; and

WHEREAS, the City is planning construction of a water main and the District is planning the construction of a sanitary sewer extension within the same roadway; and

WHEREAS, it is in the public interest for the City and the District to include the Work in the City's Project,

NOW, THEREFORE, pursuant to RCW 39.34 and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibits which are incorporated and made a part hereof,

**The parties agree as follows:**

1. **PURPOSE.** The purpose of this Agreement is to facilitate the design and construction of the District's planned sanitary sewer facilities by the City and the City's duly-authorized contractors on behalf of the District in an area where the City is planning the construction of a water transmission main.
2. **RECITALS ADOPTED.** The recitals set forth above are hereby adopted as the factual basis for this Agreement.
3. **DEFINITIONS.** Unless otherwise indicated in the text of this Agreement, the following terms are defined as set forth below:

"Agreement" means this document and its terms, conditions, covenants, and performances contained, as well as the attached Exhibits, which are incorporated herein and made a part hereof.

"City Project" means a project specified in a bid package generated by the City for the purpose of hiring a contractor to construct a City water transmission main in NE 88<sup>th</sup> Street from 82<sup>nd</sup> Avenue to 94<sup>th</sup> Avenue. This Agreement anticipates that the City Project will also include District Work, which consists of a District sewer main extension in NE 88<sup>th</sup> Street as shown on Exhibit A, Preliminary Plan, attached hereto and incorporated by this reference. The bid package shall include all drawings, specifications, documents, estimates, paperwork, bid forms, and bid bonds relevant to the City Project.

"Default" means failure to meet requirements as described in Section 1-08.10(1) of the 2012 Washington State Department of Transportation Standard Specifications for Road, Bridge,

and Municipal Construction, and specifically includes failure by the District to make payment according to the terms of this Agreement.

“Facilities” means equipment and structures installed within the scope of the District’s Work as defined herein, for example pipe, manholes, and fittings.

“Punch list” means a list of tasks to be completed in order for the District Work to be complete and accepted by the District.

“Work” means all survey, engineering, materials, equipment, labor, contract administration, construction inspection, and any other efforts to complete the District’s new facilities as shown on Exhibit A, Preliminary Plan, attached hereto and incorporated by this reference.

“Working days” means Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

#### 4. RESPONSIBILITIES OF PARTIES.

4.1. The City is responsible to perform or to contract for performance of the Work as defined in this Agreement.

4.2. The District is responsible to pay the City as required under this Agreement for (1) the cost of the Work for the District facilities located without a documented ownership of and/or interest in real property, such as being located pursuant to a franchise, a permit, or undocumented permission, and (2) all new facilities included in the Work.

5. TERM. The term of this Agreement is for a period of three (3) years, from July 1, 2012 through July 1, 2015.

6. TERMINATION. Prior to award of the bid for any contracted portion of the Work, either party may choose to terminate this Agreement by notifying the other party in writing thirty (30) days prior to termination. The termination must be effective prior to the award of the bid. After award of the bid for any contracted portion of the Work, a party may terminate this Agreement only if the other party is in Default.

6.1. If the District terminates this Agreement prior to the fulfillment of the terms stated herein, the District shall reimburse the City for all actual direct and related indirect expenses and costs, including design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs, incurred up to the date of termination associated with the District Work, as well as the cost of non-cancelable obligations, including any redesign, re-engineering or re-estimating, if necessary, to delete the Work, and contractor claims, if any, payable in accordance to Section 8. The City agrees to provide to the District all Work-related documents upon final payment by the District.

6.2. Should the City terminate this Agreement, the District shall reimburse the City for all actual direct and related indirect expenses and costs, including design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs, incurred by the City up to the date of termination associated with the District Work. The City agrees to provide to the District all Work-related documents upon final payment by the District.

7. EXTENSIONS. The term of this Agreement may be extended in one-year increments by mutual written agreement of both parties, up to a maximum of five (5) years, through June 15, 2019. The extension agreements shall be executed at least fifteen (15) days prior to the

expiration of this Agreement or any extension. The designated agents of the parties, as provided for in Section 27, may adjust the scope and compensation levels of this Agreement, the City Project and the District Work to allow for inflationary projections, costs for new services and reduced costs from reductions in services, as long as the total amount of such adjustments is equal to or less than thirty six thousand six hundred and seventy one dollars (\$36,671). The General Manager of the District is authorized to approve and execute such one-year extensions without further authorization from the Board of Commissioners. The City Manager is authorized to approve and execute such one- year extensions without further authorization of the City Council.

8. PLANS, SPECIFICATIONS AND BIDS.

8.1. The City, acting on behalf of the District, agrees to perform or contract for performance of the District facilities and District Work as shown on Exhibit A, Preliminary Plan, and in accordance with Special Provisions and Plans to be developed by the City with guidance from the District and District-provided information.

8.2. The Special Provisions and Plans shall define the construction requirements for the District facilities and District Work shown on the attached Preliminary Plan (Exhibit A), per the District's Standard Specifications, and per the 2012 Washington State Standard Specifications for Road, Bridge, and Municipal Construction.

8.3. The process by which the Special Provisions and Plans are developed shall be as follows. The City shall provide the District an engineering design for the proposed District facilities based on the attached Preliminary Plan, Exhibit A. The District's engineering staff will be given three (3) weeks to review the design and return redline comments to the City's engineering staff. The City will address the comments, make

changes, and provide a revised plan to the District within three (3) weeks, at which time the District will be given three (3) weeks to provide a final review with redline comments. The City will make the final revisions and provide a final plan to the District for review and approval within three (3) weeks. The District will have three (3) weeks to approve the final plan. Special Provisions will be developed using the same review process. The District's engineer must provide written approval for the final Plans and Special Provisions or they will not be included in with the City's project.

8.4. The City will incorporate the Plans and Special Provisions into the City Project in accordance with the District's requirements. The District agrees that it is solely responsible for ensuring that all District standards requirements are set forth in the adopted Special Provisions and Plans, and that it has supplied the City with all applicable standards, codes, regulations, or any other requirements the District is obligated to meet.

8.5. The City will include the Work to construct the District facilities in the bid advertisement for the City's Project. The City will be the District's representative during the advertisement and award period. When requested by the City, the District shall timely assist the City in answering bid questions and resolving any design issues related to the Work. All comments and clarifications related to the bidding process must go through the City. The City will provide the District with written notification of the bid price no later than two (2) days after the bid opening for all Work items for which the District is responsible. The District shall respond in writing to the City, stating its acceptance or rejection of the Work items, within two (2) working days of the written notification.

8.6. Should the District reject the bid Work items, the City shall delete those items from the City Project. The District agrees to reimburse the City for engineering costs and direct and related indirect costs incurred by the City for deleting the bid Work items from the City Project, and to pay such costs in accordance with Section 11 (Billing Method and Process).

9. CONSTRUCTION, INSPECTION, AND ACCEPTANCE.

9.1. The City agrees to administer the Work on behalf of the District.

9.2. All materials removed by the City shall be reclaimed or disposed of by the City and shall become the property of the City or the Contractor if so designated in the Special Provisions.

9.3. All contact between the District and the City's contractor shall be through the City's representatives.

9.4. The City shall promptly notify the District in writing when the Work is completed.

9.5. Upon completion of the Work, and at the request of the District, the City will provide the District with inspection documentation, including but not limited to inspection reports, backfill test results, closed circuit TV reports, and material submittals.

9.6. The District shall, within twenty (20) calendar days of being notified that the Work is completed: (a) deliver a written letter of acceptance to the City, or (b) deliver to the City a written explanation in punch list format detailing the reasons why the Work does not comply with the approved Plans and Special Provisions. The District agrees to work diligently and in good faith with the City to resolve any issues relating to the Work so as not to delay the City's Project. If issues raised by the District are resolved, the District

agrees to deliver to the City the letter of acceptance.

9.7. If the District does not respond within twenty (20) calendar days as provided in Section 9.6, the Work and the administration thereof will be deemed accepted by the District, and the City shall be released from all future claims and demands.

9.8. Upon completion and acceptance of the Work pursuant to Sections 9.6 and 9.7, the District agrees that it shall be solely responsible for all future ownership, operation and maintenance costs of its facilities, without City liability or expense.

9.9. The City will prepare the final construction documentation, including the District Work, in general conformance with the City's construction practices. The City will maintain one set of plans as the official "as-built" set, then make notations in red of all plan revisions typically recorded per standard City practice. Once the District has accepted the Work per Sections 9.6 or 9.7, the City upon request by the District will provide one copy of the as-builts to the District.

10. COST OF WORK. The District agrees that it shall be responsible for the actual direct and related indirect costs of the Work, including but not limited to design, survey, engineering work, mobilization, construction engineering, and contract administration and overhead costs. The estimated cost of the Work is two hundred and forty four thousand four hundred and seventy-three dollars and twenty-two cents (\$244,473.22). An itemized estimate of the District's responsibility for costs for the Work to be performed by the City on behalf of the District is included in Exhibit B, Cost Estimate. The parties agree that the Cost Estimate is provided only for informational purposes, and that the District's total financial responsibility may be more or less than the amount indicated in the Cost Estimate, dependent upon the actual costs of the Work.



## 11. BILLING METHOD AND PROCESS.

- 11.1. Should the District fail to make payment according to the terms of this Agreement, the City shall have the right to terminate this Agreement, charging the District for the City's associated costs of termination including non-cancellable items, City costs resulting from a delay due to the termination, and unpaid contractor charges for the District's Work.
- 11.2. The District, in consideration of the Work to be done by the City, agrees to pay the City for the actual direct and related indirect cost of all Work for which the District is responsible, including design, survey, engineering work, mobilization, construction engineering, administration and overhead costs. The City shall invoice the District, providing with the invoice sufficient documentation and information to justify the costs. The District agrees to pay the City within thirty (30) calendar days of receipt of an invoice; provided, that if the District disagrees with all or part of an invoice, the District shall notify the City of the disagreement within twenty (20) calendar days of receipt of an invoice. The notice shall include an explanation of the disagreement and supporting documentation and information, if any. The District shall pay all parts of an invoice that are not contested within the thirty-day period. The District shall pay a contested portion of an invoice within thirty (30) calendar days after the parties resolve the disagreement.
- 11.3. Billing for services will be quarterly prior to construction, and monthly after commencement of construction until the City Project is complete.
- 11.4. Payments that are not paid within the applicable periods in Section 11.2 shall be considered delinquent. Delinquent charges shall accrue interest from the date of delinquency until paid, at an interest rate of one percent (1%) per month, and shall be

assessed a twenty-five dollar (\$25.00) late charge each month that the amount is delinquent.

11.5. Payments will be remitted to the following address:

City of Vancouver  
Finance Department  
PO BOX 8995  
Vancouver WA 98668-8995

## 12. CHANGE IN WORK OR COST INCREASE.

12.1. Increase in Cost: If unforeseen conditions cause the estimate of the Work to exceed the Cost Estimate (including sales tax, engineering, and contingencies) as shown on Exhibit B by more than fifteen percent (15%), the City will notify the District of such increase within five (5) working days of the date the City receives information concerning such cost increase.

12.2. If the City desires to add to or change the Work, it shall give notice to the District, except as provided in Section 12.3 below. The District shall respond to the City request within five (5) working days of receipt of the request. The City cannot proceed with the addition or change to the Work unless the District approves the addition or change in writing. If the District fails to respond to the City's request, the District shall be deemed to have denied the request. The District agrees to pay all costs associated with any District-approved addition or change to the Work, as well as the costs of City Project or Work delays and/or City approved contractor claims associated with the District's failure to respond timely.

12.3. When the City determines that a change in the Work is required to mitigate a City Project emergency or safety threat to the traveling public, the City will direct the change

without the District's prior approval. The City will notify the District of such change and the basis for the emergency or safety threat as soon as possible thereafter.

12.4. The District may request in writing additions to the Work. If the City accepts the request, it shall notify the District in writing. The City will implement the requested changes as "elective changes," as long as the change does not negatively impact the City's water system and complies with the Special Provisions, Plans, Standard Specifications, Project permits, applicable laws, rules and regulations, and/or City design policies, and does not unreasonably delay critically scheduled City Project activities.

12.5. The District agrees to pay for the increases in City Project cost, if any, for elective changes approved under Section 12.4 in accordance with Section 11 (Billing Method and Process).

12.6. The City will make available to the District all change order documentation related to the Work.

12.7. Any contractor request submitted to the City for permission to use different materials or structures for the Work or the District's facilities will be provided to the District for immediate review. The District will have five (5) working days to advise the City as to whether it accepts the different material or structure. If no response is made within the five (5) working days by the District, the City construction engineer will be allowed to make a determination on the District's behalf.

13. FRANCHISE OR PERMIT. The District shall be responsible to apply for and obtain a permit and/or franchise as directed and required by Clark County Public Works for the new District facilities that are to be located within Clark County right of way. A copy of the permit shall be provided from the District to the City a minimum of forty-five (45) calendar days prior to

the bid date for the City Project, in order to include it with the bid packet.

14. RIGHT OF ENTRY. If necessary to carry out the Work, the District agrees to arrange for rights of entry for the City and its contractors upon all privately owned lands upon which the District has a claimed property right. The rights of entry may include reasonable entry and use restrictions. The District will provide the City with written documentation of such rights of entry within five (5) working days prior to the date of Notice to Proceed to the City's contractor.

15. ADMINISTRATION/COMMUNICATIONS. Contract managers designated by the General Manager of the District and City Manager shall administer this Agreement, monitor service level and budget provisions of this Agreement, communicate via telephone or e-mail to relay information, answer questions, or raise concerns.

16. DISPUTE RESOLUTION. In the event of a dispute between the District and the City which cannot be resolved by the contract managers, the District General Manager and the City Manager or their designated representatives shall review such dispute and may attempt to resolve the dispute.

16.1. Any controversy or claim arising out of or relating to this Agreement or the alleged breach of this Agreement that cannot be resolved by the District General Manager and the City Manager may be submitted to mediation. If the dispute is not resolved through mediation, it shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW.

16.2. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree

that any such action or proceedings shall be brought in the Superior Court of Clark County, Washington. Each Party shall be responsible for its own attorney's fees and costs.

17. INDEPENDENT CONTRACTOR. Both Parties shall be deemed independent contractors for all purposes, and the employees of each party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. The District shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of the District an employee of the City or any employee of the City an employee of the District for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

18. HOLD HARMLESS/INDEMNIFICATION. To the extent authorized by law, the District and City shall indemnify and hold harmless one another and their employees, officers, contractors and agents, from and shall process and defend at their own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement, provided, that if such claims are caused by or result from the concurrent negligence of (a) the District and (b) the City, their respective employees, officers, contractors or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the District or the City, and provided further, that nothing

herein shall require the District or City to hold harmless or defend the other or its employees, officers, contractors or agents from any claims arising from that Party's sole negligence or that of its employees, officers, contractors or agents. The terms of this section shall survive the termination of this Agreement.

18.1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against either party, each party retains the right to participate in said suit if any principle of public law is involved.

18.2. This indemnity and hold harmless provision shall include any claim made against either party by an employee, officer, contractor, subcontractor or agent of the other party, even if the other party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the first party. Both parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that each party provide the other party with the broadest scope of indemnity permitted by RCW 4.24.115.

19. ATTORNEYS FEES AND COSTS. The parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.

20. NO THIRD PARTY BENEFICIARY. The District does not intend by this Agreement to assume any contractual obligations to anyone other than the City. The City does not intend by this Agreement to assume any contractual obligations to anyone other than the District. The District and City do not intend there be any third-party beneficiary to this Agreement.

21. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the City:

CITY OF VANCOUVER  
P.O. Box 1995  
Vancouver, Washington 98668-1995  
Attention: City Manager

To the District:

CLARK REGIONAL WASTEWATER DISTRICT  
PO Box 8979  
Vancouver, WA 98668  
Attention: General Manager

The name and address to which notices shall be directed may be changed by either party giving the other notice of such change to the other as provided in this section.

22. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.
23. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 5 (Term) and 7 (Extensions). Its method of termination is set forth in Section 6. Its manner of financing and of establishing and maintaining a budget therefore is described in Sections 10 (Cost of Work) and 11 (Billing Method and Process). No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.
24. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

25. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both parties, except as provided in previous sections.

26. AUDIT AND RECORDS. During the progress of the Work and for a period of not less than three (3) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, State of Washington, and/or Federal Government, and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audits are commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

27. DOCUMENT EXECUTION AND FILING. The District and the City agree that there shall be three (3) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the District and the City. Upon execution, one executed original of this Agreement shall be retained by the Vancouver City Clerk and one shall be retained by the District. The Vancouver City Clerk shall cause a copy of this agreement to be posted on the City website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on the city's website, each such duplicate original shall constitute an agreement binding upon all parties. One each of the duplicate originals shall be distributed to the designated agents of the parties, named as follows:



Michelle Henry, P.E.  
City of Vancouver - Engineering  
P.O. Box 1995  
Vancouver, Washington 98668-1995

J.D. Robin Krause, P.E.  
Clark Regional Wastewater District  
PO Box 8979  
Vancouver, WA 98668

28. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

29. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the District and City have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the 11<sup>TH</sup> day of DECEMBER, 2012.

CLARK REGIONAL WASTEWATER DISTRICT

By: SIGNATURE ON FILE  
John Peterson, General Manager

Approved as to form: /

By: SIGNATURE ON FILE  
Rod Kaseguma, Attorney for the District

CITY OF VANCOUVER, a municipal corporation

By: SIGNATURE ON FILE  
Eric Holmes, City Manager

By: SIGNATURE ON FILE  
Lloyd Tyler, City Clerk  
*Came Lewellen, Deputy City Clerk*

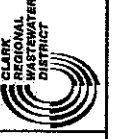
Approved as to form:

By: SIGNATURE ON FILE By: Judith Zeider  
Chief Assistant City Attorney  
*Ted H. Gathe, City Attorney*

ATTACHMENTS:

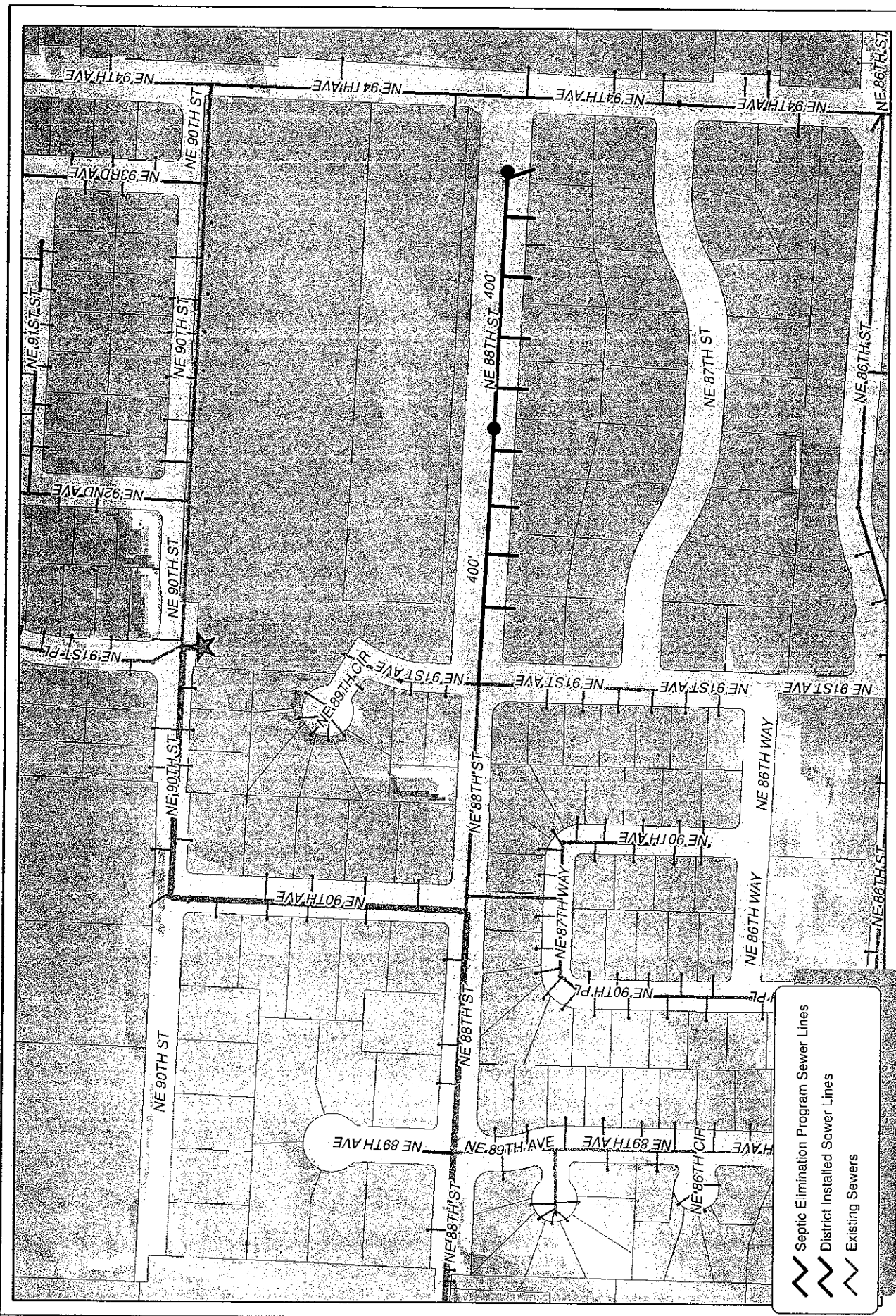
EXHIBIT "A": PRELIMINARY PLAN

EXHIBIT "B": COST ESTIMATE

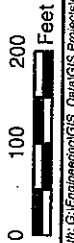


# Glenmar SEP

Exhibit A - Preliminary Plan



- Septic Elimination Program Sewer Lines
- District Installed Sewer Lines
- Existing Sewers



**Predesign ENGINEER'S ESTIMATE**

Project Name **Glenmar SEP - NE 88th Street - NE 91st Ave to NE 94th Ave**  
 Subject to Section 1-07.2(3) - State Sales Tax - Rule 170

11/13/12  
 Project No. TBD

Item No.	Quantity	Unit	Bid Item Description	Unit Price	Total
1	1	LS	MOBILIZATION	20,000	20,000
2	1	LS	TRAFFIC CONTROL	25,000	25,000
3	115	CY	CRUSHED SURFACING BASE COURSE	45	5,175
4	115	TON	HMA CL. 1/2 IN. PG 64-22	145	16,675
5	3	EACH	MANHOLE 48 IN. DIAM. TYPE 1	3,500	10,500
6	1	EACH	CONNECTION TO DRAINAGE STRUCTURE	500	500
7	1150	LF	TRENCH SAFETY SYSTEM *	3	3,450
8	300	LF	ABS COMPOSITE SEWER PIPE 4 IN. DIAM.	55	16,500
9	850	LF	PVC SANITARY SEWER PIPE 8 IN. DIAM.	70	59,500
11	1	LS	EROSION & SEDIMENT CONTROL	2,500	2,500
12	1	LS	Roadside Restoration	5,000	5,000
<b>TOTAL OF ITEMS PER SECTION 1-07.2(3)</b>				<b>Line A</b>	<b>\$164,800</b>
<b>Sales Tax at 8.4% (0.084 x Line A)</b>				<b>Line B</b>	<b>\$13,843</b>
<b>TOTAL OF ITEMS PER SECTION 1-07.2(3) PLUS SALES TAX (Line A +</b>				<b>Line C</b>	<b>\$178,643</b>
*Minimum bid of \$1.00 per linear foot of sewer trench, per Section 1-07.					
<b>Construction Schedule Adjustment 0%</b>					<b>\$0</b>
<b>Contingency 15%</b>					<b>\$26,796</b>
<b>Total Construction</b>					<b>\$205,440</b>
<b>Design 8%</b>					<b>\$16,435</b>
<b>Survey 2%</b>					<b>\$4,109</b>
<b>CM 8%</b>					<b>\$16,435</b>
<b>Record Drawings 1%</b>					<b>\$2,054</b>
<b>Total Project Cost</b>					<b>\$244,473</b>